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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/714,050	11/14/2003	Richard Parker Evans	040133-000100US	3217
20350	7590	07/18/2006	EXAMINER	
TOWNSEND AND TOWNSEND AND CREW, LLP			PRONE, CHRISTOPHER D	
TWO EMBARCADERO CENTER			ART UNIT	
EIGHTH FLOOR			PAPER NUMBER	
SAN FRANCISCO, CA 94111-3834			3738	

DATE MAILED: 07/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/714,050	<b>Applicant(s)</b> EVANS, RICHARD PARKER	
	<b>Examiner</b> Christopher D. Prone	<b>Art Unit</b> 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-10 and 13-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 13-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>2/04 5/04</u> | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Election/Restrictions***

Applicant's election without traverse of Group 1 claims 1-10 and 13-20 in the reply filed on 4/11/06 is acknowledged.

In regards to claims 11 and 12 the applicant requested that they be cancelled, but the current listing of claims does not list them as cancelled. The examiner is treating these claims as cancelled. Appropriate action is required.

### ***Claim Objections***

Claim 10 is objected to because of the following informalities: lack of antecedent basis. Claim 10 recites the limitation "the mold" in line 2. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) The invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4-7, 10, 13, 14, 16-18, and 20 rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent 5,123,927 Duncan et al.

Duncan discloses the same invention being a method for treating an infected area of a knee of a joint comprising the steps of: getting access to the implant area,

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inserting a tibia component using an antibiotic-impregnated material, forming a femoral component with a smooth articulating surface made of a antibiotic-impregnated material, wherein the femoral component is formed by mixing a bone cement powder with a powdered antibiotic pressed into a femoral shaped mold and then trimming excess material from the mold, attaching the femoral component, and interfacing the tibial component with the femoral component thereby maintaining the knee joint space (outlined in figure 1 of Duncan).

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 15 are rejected under 35 U.S.C. 103 as being unpatentable over USPN 5,123,927 Duncan in view of USPN 6,506,215 B1 Letot et al.

Duncan discloses the invention substantially as claimed being a method for treating an infected knee joint. However, Duncan does not disclose that the tibial component is constructed of polyethylene.

Letot teaches the use of a knee implant comprising a polyethylene tibial component (20) in the same field of endeavor for the purpose of providing the implant with increased biocompatibility and durability.

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It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the polyethylene tibial component of Letot with the method and implant of Duncan in order to provide increased durability and resistance to wear for patient after the surgery.

Claims 8, 9, and 19 are rejected under 35 U.S.C. 103 as being unpatentable over USPN 5,123,927 Duncan in view of USPN 5,980,573 Shaffner.

Duncan discloses the invention substantially as claimed being a method for treating an infected knee joint. However, Duncan does not disclose re-accessing the implant area after treating the infection, removing the tibial and femoral components, and then implanting a permanent prosthesis.

Shaffner teaches a method for fighting infection and maintaining spacing in a prosthesis implant area comprising inserting a temporary antibiotic impregnated prosthesis for an extended period of time, removing the temporary prosthesis, and inserting a permanent prosthesis in the same field of endeavor for the purpose of providing a temporary implant that prevents/eliminates infection at the implant site that will maintain the function and spacing of the joint allowing the user to receive a permanent implant in the future.

It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the method of replacing the antibiotic implant with a permanent implant as taught by Shaffner with the device of Duncan in order to provide a infection free implant site and a second permanent implant.

**Conclusion**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Christopher D. Prone whose telephone number is (571) 272-6085. The examiner can normally be reached on Monday Through Fri 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott can be reached on (571) 272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Christopher D Prone  
Examiner  
Art Unit 3738

  
CDP

  
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